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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

STEVEN C. JACOBS,

Plaintiff,

v.

LAS VEGAS SANDS CORP., a Nevada  
corporation; SANDS CHINA LTD., a Cayman  
Islands corporation; SHELDON G. ADELSON,  
in his individual and representative capacity;  
DOES I-X; and ROE CORPORATIONS I-X,

Defendants.

AND ALL RELATED MATTERS.

CASE NO.: A627691-B  
DEPT NO.: XI

Date: July 13, 2012  
Time: 9:30 a.m.

**DEFENDANTS' STATEMENT  
REGARDING DATA TRANSFERS**

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1 In advance of the hearing scheduled for July 13, 2012, Defendants Las Vegas Sands  
2 Corporation ("LVSC") and Sands China Ltd. ("SCL") respectfully submit this statement  
3 regarding data transfers from Macau to the United States and related issues. In providing this  
4 statement, Defendants do not intend to and do not disclose any communications protected by the  
5 attorney-client privilege, and Defendants do not intend to and do not waive any attorney-client or  
6 attorney work product privileges.

7  
8 **I. INTRODUCTION**

9 Defendants take seriously the Court's comments at the June 28, 2012 Status Conference  
10 and will be prepared to discuss further with the Court the issues involving the Macau documents.  
11 In the interim, and as discussed in the July 3, 2012 telephonic conference, Defendants make this  
12 submission to present the facts as currently developed regarding the transfers from Macau to the  
13 U.S. of data potentially discoverable in this litigation. Although the focus of the discussion with  
14 the Court on June 28, 2012 was on the transfer of data for which Mr. Jacobs was the custodian,  
15 Defendants are also analyzing other transfers of data from Macau to the U.S. that are potentially  
16 discoverable in this case. Defendants and their counsel have worked hard over the past 8 days to  
17 present these facts, but this work is not yet complete. This submission presents Defendants' best  
18 efforts at this time.

19  
20 **II. TRANSFERS OF PLAINTIFF'S DATA**

21 **A. Transfers in August 2010**

22 Plaintiff was terminated on July 23, 2010. Following a communication with Gayle  
23 Hyman, then General Counsel of LVSC, on or about August 5, 2010, Michael Kostrinsky, who  
24 was then LVSC's Deputy General Counsel, contacted the SCL legal department to request a  
25 transfer to LVSC of electronic images of Mr. Jacobs' email and the hard drive of his computer.  
26 After an initial effort to transfer some or all of this data via an FTP was unsuccessful, IT  
27 personnel in Macau copied Jacobs' data onto a new hard drive. That hard drive was received by  
28 LVSC on or about August 16, 2010 and is referred to herein as the "August 16 Hard Drive."

1 The August 16 Hard Drive contains ghost images of hard drives of three computers, as  
2 well as emails (Outlook PSTs). According to LVSC's records, the images of the hard drives were  
3 created on July 26 and 27, 2010, and the PST files were created on August 5, 2010. LVSC has  
4 maintained the August 16 Hard Drive since August 16, 2010. An image of the August 16 Hard  
5 Drive was created by Stroz Friedberg (a data forensics firm) on March 22, 2011.<sup>1</sup> LVSC still has  
6 the August 16 Hard Drive and, as Plaintiff's counsel was informed on July 2, 2012, is providing it  
7 to Advanced Discovery, the Court-appointed ESI vendor.

8 Starting no later than August 25, 2010, LVSC IT personnel arranged for Mr. Kostrinsky to  
9 have access to Mr. Jacobs' emails that had been transferred on the August 16 Hard Drive through  
10 Mr. Kostrinsky's work laptop computer in order to enable him to review this data.<sup>2</sup>

11 Mr. Kostrinsky reviewed some of the emails. Stephen Peek and another attorney from his  
12 law firm also reviewed certain emails on Mr. Kostrinsky's computer. Some of Jacobs' emails  
13 were printed and provided to or shared with outside and inside counsel. It is possible that these  
14 emails were shared with other LVSC employees.

15 **B. Other Transfers**

16  
17 Mr. Kostrinsky visited Macau in November 2010. During that trip, he may have been  
18 given a hard drive or other data storage device and brought that item back to Las Vegas. It  
19 appears that Mr. Kostrinsky instructed LVSC IT to load data from a device onto a computer so  
20 that he could review the data. LVSC is attempting to locate this device and ascertain its content.

21 In connection with the Jacobs matter, Mr. Kostrinsky caused LVSC IT to create a shared  
22 drive in late 2010. In addition, in connection with a subpoena from the United States Securities  
23 and Exchange Commission ("SEC") received on February 9, 2011, Mr. Kostrinsky caused LVSC  
24 IT to create another shared drive. The "shared drives" were document repositories that allowed  
25

26 <sup>1</sup> The role of Stroz Friedberg is more fully described below.

27 <sup>2</sup> At the May 24, 2012 Status Conference, counsel stated that defendants had not searched Mr. Jacobs' data. Tr. at 9-  
28 10, 14. The context of this discussion was the review of Mr. Jacobs' data for purposes of responding to Plaintiff's  
jurisdictional discovery requests. Mr. Kostrinsky and other counsel have reviewed the data, though not in connection  
with responding to Plaintiff's jurisdictional discovery requests.

1 authorized personnel, such as inside and outside counsel, to review images of documents that had  
2 been collected and to add documents for review. It appears that at least one in house attorney in  
3 Macau, Anne Salt, had access to one or both of these shared drives and could upload documents  
4 to one or both of them. Defendants are continuing to investigate whether data was uploaded in  
5 Macau, and if so, whether copies of any such data currently exist in the U.S. Defendants are also  
6 attempting to determine the current status and content of these shared drives.

7 In addition, at various times, Mr. Kostrinsky received emails from Macau consisting of  
8 information potentially relevant to the Jacobs litigation.<sup>3</sup> Such data has been preserved and will  
9 be reviewed for responsiveness to Plaintiff's jurisdictional discovery requests, subject to  
10 appropriate privilege objections.

11 **III. TRANSFERS IN FEBRUARY-MARCH 2011**

12  
13 On February 9, 2011, LVSC received a subpoena from the SEC. LVSC personnel  
14 requested that SCL personnel transmit copies of responsive data to LVSC. It appears that Ms.  
15 Hyman, Mr. Kostrinsky, Anne Salt of SCL, and probably others were involved in these  
16 communications.

17 In March 2011, LVSC received two hard drives from Macau. One of these hard drives  
18 (received in approximately mid-March) contained images of hard drives of computers used by  
19 two employees in Macau, and the other hard drive (received on March 4) contained images of  
20 hard drives of computers used by three other employees in Macau, as well as two PST files  
21 containing Jacobs emails (one believed to contain 2010 emails, and one 2009 emails). These hard  
22 drives are referred to herein as the "March Hard Drives." LVSC's records indicate that the PST  
23 files on the hard drive received on March 4 were created on February 18, 2011.

24 LVSC has maintained the March Hard Drives since their receipt and, also as described to  
25 Plaintiff's counsel on July 2, 2012, is providing them to Advanced Discovery. In March 2011,  
26 Stroz Friedberg was retained by counsel to the Audit Committee and Special Litigation

27  
28 <sup>3</sup> As discussed below, other LVSC employees, as well as inside and outside counsel, also received emails from  
Macau containing information potentially relevant to the Jacobs litigation.

1 Committee of LVSC's Board of Directors to collect and process data in connection with the SEC  
2 subpoena. One of the first steps taken by Stroz Friedberg was to image data that LVSC had  
3 already collected. It appears that on March 22, 2011, Stroz Friedberg imaged the March Hard  
4 Drives (as well as the August 16 Hard Drive, as noted above).

5 In connection with this litigation, Defendants have retained FTI as their data processing  
6 vendor. Accordingly, on or about May 28, 2012, FTI received from Stroz Friedberg a copy of the  
7 data imaged from the August 16 and March Hard Drives (including the Jacobs data described  
8 above), in order to enable Defendants to search and review such data for this case.

9  
10 **IV. STATUS OF ORIGINAL MEDIA**

11 SCL is aware of two desktop computers that Mr. Jacobs used while employed by SCL. In  
12 addition, it appears that Mr. Jacobs may have used two laptop computers issued by SCL, VML,  
13 and/or their affiliates in Macau.<sup>4</sup> For each of these computers, SCL possesses in Macau the  
14 original hard drive and/or either a ghost image or forensic image of the hard drive. Ghost images  
15 typically contain a copy of all data on the original hard drive, except data that may have been  
16 housed in (1) unallocated space and (2) page files. In general, data housed in unallocated space  
17 and page files may include deleted files and internet history files.

18 Personnel in Macau were instructed to preserve Mr. Jacobs' original data in Macau. It  
19 appears that this instruction was not followed with respect to the original hard drive of the  
20 desktop computer that Mr. Jacobs was using at the time of his termination. A ghost image of that  
21 hard drive was created on or about July 27, 2010, and a copy of that ghost image is included on  
22 the August 16 Hard Drive. It appears that, after the ghost image was created, the original hard  
23 drive of the desktop computer that Mr. Jacobs was using at the time of his termination may have  
24 been recycled for use by another SCL employee. SCL has secured in Macau the computer  
25 assigned to the other SCL employee, which may contain the same hard drive that was in the  
26 desktop computer that Mr. Jacobs was using at the time of his termination. SCL also has secured

27  
28 <sup>4</sup> Mr. Jacobs had a personal laptop computer, which he retained following his termination. Neither LVSC nor SCL made an image of Mr. Jacobs's personal laptop.

1 the other desktop computer, which Mr. Jacobs used until April 2010.

2 SCL has secured in Macau original hard drives from two laptop computers and ghost  
3 images of hard drives from two other laptop computers. Further analysis is required to identify  
4 which of these hard drives, if any, Mr. Jacobs used. Copies of the ghost images of the hard drives  
5 from the two laptop computers are included on the August 16 Hard Drive.

6 **V. OTHER DATA TRANSFERS**  
7

8 Defendants have also endeavored to catalog other data that was transferred from Macau to  
9 the United States and that is potentially discoverable in this litigation. Today, Defendants can  
10 report the following.

11 It appears that starting on or about November 28, 2007, copies of incoming emails to two  
12 employees in Macau were automatically transmitted to Ms. Hyman in Las Vegas.<sup>5</sup> It appears that  
13 the employees in question were not informed that their incoming emails were being automatically  
14 transmitted to Ms. Hyman. It also appears that the automatic transmittal of the incoming emails  
15 continued into the discovery period. Such documents are included within the Stroz dataset.  
16 LVSC will review this data to determine if it contains documents responsive to Plaintiff's  
17 jurisdictional discovery requests and will produce any unprivileged documents relevant to  
18 personal jurisdiction.

19 From 2008-10, the law firm Orrick, Herrington & Sutcliffe LLP performed legal services  
20 for LVSC. In connection with that work, it appears that documents were transferred from Macau  
21 to the U.S. in 2009. Such documents are included in the Stroz dataset. LVSC will review this  
22 data to determine if it contains documents responsive to Plaintiff's jurisdictional discovery  
23 requests and will produce any unprivileged documents relevant to personal jurisdiction.

24 In addition, it appears that Mr. Kostrinsky was given a CD in Macau in November 2010,  
25 which he also brought back to Las Vegas. LVSC has located a CD that it believes may be the CD  
26 that Mr. Kostrinsky brought back from Macau to Las Vegas. LVSC will deliver that CD to  
27 Advanced Discovery.

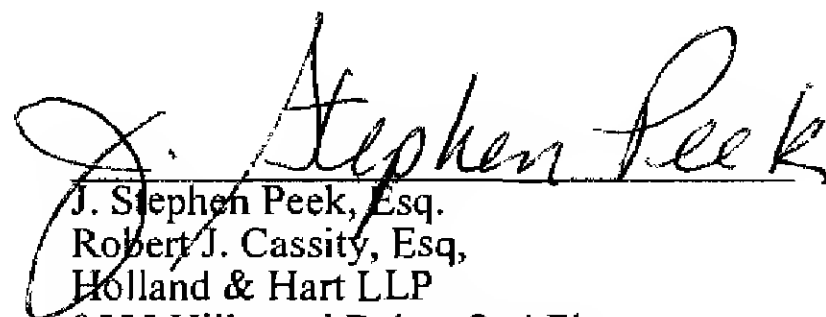
28 <sup>5</sup> During this time, Ms. Hyman was LVSC's Deputy General Counsel.

1 Finally, in the ordinary course of business, employees of SCL and VML send emails to  
2 employees of LVSC on business matters. Moreover, emails have been sent to, from, and among  
3 in-house and outside counsel for VML, SCL, and LVSC in connection with this litigation and  
4 other legal work.<sup>6</sup> LVSC has collected emails from LVSC custodians and searched relevant  
5 custodians for documents responsive to Plaintiff's jurisdictional discovery requests. To the extent  
6 such documents contain emails from Macau that might be said to contain personal data, LVSC  
7 will not withhold them based on Macau's Personal Data Protection Act (although LVSC reserves  
8 the right to assert other applicable privileges).

9  
10 **VI. CONCLUSION**


11 Defendants are continuing to search for data transferred from Macau to the U.S. that is  
12 potentially discoverable in this case. Defendants will review the data in the U.S. for  
13 responsiveness to Plaintiff's jurisdictional discovery requests and will not withhold such  
14 documents based on Macau's Personal Data Protection Act.

15 DATED July 6, 2012.

16  
17   
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27 <sup>6</sup> For example, on at least two occasions, in the course of collecting documents that were potentially responsive to  
28 Plaintiff's document requests on personal jurisdiction, SCL employees transmitted records containing personal data  
to LVSC and/or SCL's outside counsel.

**CERTIFICATE OF SERVICE**

Pursuant to Nev. R. Civ. P. 5(b), I certify that on July 6, 2012, I served a true and correct copy of the foregoing **DEFENDANTS' STATEMENT REGARDING DATA TRANSFERS** via e-mail and by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

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An Employee of Holland & Hart LLP



## **Dineen Bergsing**

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**From:** Dineen Bergsing  
**Sent:** Friday, July 06, 2012 3:27 PM  
**To:** James Pisanelli; 'Debra Spinelli'; Todd Bice; 'kap@pisanellibice.com'; 'see@pisanellibice.com'  
**Cc:** 'Fetaz, Max'  
**Subject:** LV Sands/Jacobs - Defendants' Statement Regarding Data Transfers  
**Attachments:** Untitled.PDF - Adobe Acrobat Pro

**Importance:** High

Please see attached Defendants' Statement Regarding Data Transfers. A copy to follow by mail.

Have a good weekend, everyone.

### **Dineen M. Bergsing**

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